



## Department of Health

ANDREW M. CUOMO  
Governor

HOWARD A. ZUCKER, M.D., J.D.  
Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

May 18, 2016

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Ashraf Azir, S.A.  
[REDACTED]

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NYS Department of Health  
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Albany, New York 12237

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Parsippany, New Jersey 07054

**RE: In the Matter of Ashraf Azir, S.A.**

Dear Parties:

Enclosed please find the Determination and Order (No. 16-169) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct  
New York State Department of Health  
Riverview Center  
150 Broadway – Suite 355  
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,



James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah  
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH  
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT

In the Matter of

Ashraf Azir, S.A. (Respondent)

A proceeding to review a Determination by a Committee  
(Committee) from the Board for Professional Medical  
Conduct (BPMC)

Administrative Review Board (ARB)

Determination and Order No. 16- 169

COPY

Before ARB Members D'Anna, Koenig, Grabiec, Wilson and Milone  
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Nathaniel White, Esq.  
For the Respondent: Blair R. Zwillman, Esq.

Following the Respondent's Federal criminal conviction for providing illegal kickbacks to physicians, a BPMC Committee determined that the Respondent's conduct amounted to professional misconduct. The Committee voted to suspend the Respondent-Specialist Assistant from practice for five years, with two years stayed, and to place the Respondent on probation for five years following the suspension. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2016), the Respondent asked the ARB to modify certain wording that appears in the Determination. After reviewing the hearing record and the parties' review submissions, the ARB affirms the Committee's Determination in full and denies the request for modification.

Committee Determination on the Charges

Pursuant to PHL § 230 *et seq.*, BPMC and its Committees function as a duly authorized professional disciplinary agency of the State of New York. The BPMC Committee in this case conducted a hearing under the expedited hearing procedures (Direct Referral Proceeding) in PHL

§230(10)(p). The Direct Referral Proceeding began with an August 31, 2015 Order by the Commissioner of Health of the State of New York suspending the Respondent from practice summarily, pursuant to § PHL 230(12)(b), following the Respondent's conviction for a felony. The Petitioner's Statement of Charges [Hearing Exhibit 1] alleged that the Respondent committed professional misconduct under the definition in N. Y. Education Law (EL) §6530(9)(a)(ii) (McKinney 2016) by engaging in conduct that resulted in a conviction under Federal Law. In the Direct Referral Hearing, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). Following the Direct Referral Hearing, the Committee rendered the Determination now on review.

The evidence before the Committee showed that the Respondent entered a guilty plea in the United States District Court for the District of New Jersey to violating the Federal Health Care Program Illegal Remunerations Statue at Title 42 United States Code § 1320a-7b(b)(2)(A). The Respondent was a partner in two diagnostic imaging facilities. The Respondent violated the Remunerations Statute by paying kickbacks to physicians for referring patients to the facilities. The facilities then billed Federal health insurance programs for payment. The Court sentenced the Respondent to serve one year on probation, to pay a \$2,500.00 fine and to forfeit \$4,229.48.

In their Determination, the Committee suspended the Respondent from practice for five years, stayed the last two years and placed the Respondent on probation for three years following the actual suspension. The probation terms appear as Appendix II to the Committee's Determination and the terms include requirements that the Respondent practice with a monitor and complete coursework in appropriate billing practices. As relevant on this review, the Committee stated:

"The Respondent engaged in a fraudulent scheme to benefit his MRI facility located in Perth Amboy, New Jersey"

The Committee stated that the Respondent's conduct demonstrated a lack of integrity and a breach of the public trust, but the Committee also noted that the Respondent acknowledged his

wrongdoing. The Committee found further mitigating factors in the Respondent's involvement in church and volunteer activities and in the lack of any prior criminal history.

### Review History and Issues

The Committee rendered their Determination on December 8, 2015. This proceeding commenced initially on December 21, 2015, when the ARB received the Respondent's Notice requesting a Review.

The Respondent limited the Review to requesting that the ARB modify the language at three places in the Committee's Determination. In one place the Committee referred to the Respondent's medical license and in a second the Committee referred to the Respondent's medical practice. The Respondent is a Specialist Assistant rather than a physician. In the third spot, the Committee wrote the previously quoted sentence concerning the Respondent's fraudulent scheme benefitting the MRI facility.

The ARB Review was stayed initially to allow the Respondent to request the modifications directly from the Committee. The Committee did render an amended Determination on February 12, 2016, which changed the two medical references, but the Committee made no modification to the sentence concerning benefitting the MRI facility. The Respondent then requested that the ARB make the modification.

In a February 25, 2016 brief to the ARB, the Respondent requested that the ARB remove the sentence concerning benefitting the MRI facility and substitute a sentence to read:

"Respondent engaged in a fraudulent kickback scheme and was the beneficiary of improper referrals."

The Respondent argued that nothing in the record supported the Committee's statement about benefits to the MRI facility. The Respondent stated that as far as the New Jersey Federal District

Court was concerned, the Respondent was the sole beneficiary of his misdeed. The Respondent contended that the benefits went to the partners in the MRI facility rather than the facility.

In a reply brief on March 4, 2016, the Petitioner opposed the request for modification. The reply argued that the Respondent was a partner in two MRI facilities and that the Respondent paid a physician kickbacks for referring MRI patients to the facilities. The Petitioner contended that the facilities then billed the patients' Federal health insurance programs and that nothing in the record shows that the Respondent received payments individually from the insurers.

#### ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL § 230-a permits. The ARB may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3<sup>rd</sup> Dept. 1993); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3<sup>rd</sup> Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3<sup>rd</sup> Dept. 1995). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may

consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3<sup>rd</sup> Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

#### Determination

The ARB has considered the record and the parties' briefs. The ARB affirms the Committee's Determination that the Respondent's engagement in a criminal scheme constituted professional misconduct and the Committee's Determination to suspend the Respondent from practice and then place him on probation. Neither party challenged the Committee's Determination on the charges or on sanction. The ARB denies the Appellant's request that the ARB modify the Committee's Determination. We agree with the Petitioner that the record showed no payments directly to the Respondent from Federal insurers. The ARB sees no reason to modify the wording in the Committee's Determination.

## ORDER

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to suspend the Respondent from practice for five years, stay the last two years and place the Respondent on probation for three years following the actual suspension, under terms that appear as Appendix II to the Committee's Determination.
3. The ARB denies the Respondent's request that we modify certain wording in the Committee's Determination.

Peter S. Koenig, Sr.  
Steven Grabiec, M.D.  
Linda Prescott Wilson  
John A. D'Anna, M.D.  
Richard D. Milone, M.D.



In the Matter of Ashraf Azir, S.A.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the  
Matter of Ms. Azir.

Dated: 4 May, 2016



Linda Prescott Wilson

In the Matter of Ashraf Azir, S.A.

Peter S. Koenig, Sr., an ARB Member concurs in the Determination and Order in the Matter of Mr. Azir.

Dated: May 4, 2016



Peter S. Koenig, Sr.

In the Matter of Ashraf Azir, S.A.

Steven Grabiec, M.D., an ARB Member concurs in the Determination and Order in the

Matter of Mr. Azir.

Dated: 5/4/, 2016



Steven Grabiec, M.D.

In the Matter of Ashraf Azir, S.A.

Richard D. Milone, M.D., an ARB Member concurs in the Determination and Order in  
the Matter of Mr. Azir.

Dated: May 6, 2016 2016



Richard D. Milone, M.D.

In the Matter of Ashraf Azir, S.A.

John A. D'Anna, M.D., an ARB Member concurs in the Determination and Order in the  
Matter of Mr. Azir.

Dated: May 16, 2016



John A. D'Anna, M.D.